

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MARCUS SMITH #176377

PETITIONER

VS.

CIVIL ACTION NO. 2-19-cv-27-KS-LRA

WARDEN SCOTT MIDDLEBROOKS

RESPONDENT

ORDER

This cause came on this date to be heard upon the Report and Recommendation of the United States Magistrate Judge entered herein on May 29, 2020, after referral of hearing by this Court, and Objection to Report and Recommendation [40] filed by Marcus Smith. The Respondent filed a Response in opposition [41] to the Objection, and the Court, having fully reviewed same and the record in this matter, and being fully advised in the premises, finds that said Report and Recommendation should be adopted as the opinion of this Court. The Objection [40] that was filed by the Petitioner and refiled as [42] do not address the basis for Judge Anderson's recommendation. In addition to the fact that Petitioner failed to exhaust his claims pursuant to 28 U.S.C. §2254 (b), the claims are barred by the Statute of Limitations. The Petitioner gives no basis for equitable tolling and barring equitable tolling the limitation has clearly run.

IT IS, THEREFORE, ORDERED that the Report and Recommendation be, and the same hereby is, adopted as the finding of this Court, and the Complaint is hereby dismissed with

prejudice. A separate judgment will be entered herein in accordance with this Order as required by Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED, this the 5th day of August, 2020.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE